

Remarks

The Applicant respectfully requests reconsideration of the present U.S. Patent application as amended herein. Claims 37-42 have been cancelled without prejudice. No claims have been added or withdrawn. Thus, claims 1-36 remain pending in the application.

Information Disclosure Statement

The Applicant is filing an information disclosure statement contemporaneously with this response. The information disclosure statement cites an article that is, at least in part, the inventors' own work. The Applicant is filing a declaration from each inventor specifying that the article is, at least partly, the inventors' work.

Oath/Declaration

The Office action stated that the previously filed declaration is defective because it is unsigned. After inspecting the file, however, the Applicant determined that a signed declaration was filed on 30 July 2001. The applicant spoke with Examiner Ly via telephone on 24 February 2004 to discuss the declaration for this application. Examiner Ly asked the Applicant to resubmit the declaration that was initially filed on 30 July 2001. In response, the Applicant has included a copy of the signed declaration that was filed on 30 July 2001.

Claim Rejections § 102

Claims 1-2, 4-14, 16-26, and 28-42 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,772,333B1 issued to Brendel (*Brendel*). Claims 37-42 have been cancelled without prejudice and, thus, the rejection of claims 37-42 is moot. For at least the reasons set forth below, the Applicant submits that claims 1-2, 4-14, 16-26, and 28-36 are not rendered anticipated by *Brendel*.

The Manual of Patent Examining Procedure (“MPEP”), in § 2131, states:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the … claim.” *Richardson v. Suzuki Motor Co.*, 869 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Thus, under 35 U.S.C. § 102, a claim is anticipated *only if* each and every element of the claim is found in the cited reference and the cited reference must show the invention in as complete detail as contained in the claim.

Claim 1 recites:

receiving a data packet from a source;

determining whether a session identity exists for a communication session with the source;

transmitting the data packet to a destination if no session identity exists;

receiving the session identity from the destination;

transmitting subsequent data packets received from the source along with the session identity to the destination.

(Emphasis added). Independent claims 13 and 25 similarly recite “determine[ing] whether a session identity exists … transmit[ting] the data packet to a destination if no

session identity exists ... [and] receiv[ing] the session identity from the destination.”

Regarding these elements of claims 1, 13, and 25 the Office action directs the Applicant’s attention to column 9, line 31 through column 10, line 17, wherein *Brendel* states:

The load-balancer parses the incoming request data for a SSL session ID field, step 82. **If the connection is not encrypted, the SSL session ID field does not exist, and the load-balancer proceeds to step 84** ... Step 84 parses the request data for a cookie ... If the special load-balancing cookie is found, the load-balancer assigns the connection to the server identified by the cookie ... When step 84 does not find a cookie with a server assignment parameter, then the default or random load-balancing is performed, step 86.

(Emphasis added).

As shown above, *Brendel* is generally directed to the problem of load balancing for clear-text and encrypted connections that are assigned to the same server. See, e.g., column 9, lines 29-36. For example, *Brendel* discloses using an SSL session ID to determine a server assignment for received data. See, e.g., column 9, lines 61-67. *Brendel* does not, however, disclose “determine[ing] whether a session identity exists ... transmit[ting] the data packet to a destination **if no session identity exists** ... [and] receiv[ing] the session identity from the destination,” as recited in claims 1, 13, and 25. Instead, *Brendel* states that if an SSL session ID field does not exist, then the received data is forwarded based on either information obtained from a cookie or a load-balancing algorithm. For at least the reason that *Brendel* does not disclose “determine[ing] whether a session identity exists ... transmit[ting] the data packet to a destination **if no session identity exists** ... [and] receiv[ing] the session identity from the destination,” the Applicant respectfully submits that *Brendel* does not anticipate claims 1, 13, and 25.

Claims 2 and 4-8 depend from claim 1. Claims 14 and 16-20 depend from claim 13. Claims 26 and 28-32 depend from claim 25. For at least the reason that dependent claims include the limitations of the claims from which they depend, the Applicant submits that claims 2, 4-8, 14, 16-20, 26, and 28-32 are not anticipated by *Brendel*.

Independent claim 9 recites:

receiving a data packet from a source through a network node;

determining whether a session identity exists for a communication session with the source;

generating a session identity if no session identity exists; and

transmitting the session identity to the network node.

Independent claims 21 and 33 similarly recite “receiving a data packet from a source through a network node … determine[ing] whether a session identity exists … [and] generating a session identity if no session identity exists.” Regarding claims 9, 21, and 33, the Office action directs the Applicant’s attention to column 9, line 31 through column 10, line 17 of *Brendel*. As shown above these passages state that if an SSL session ID field does not exist, then the received data is forwarded based on either information obtained from a cookie or a load-balancing algorithm. The cited passages of *Brendel*, however, do not disclose “receiving a data packet from a source through a network node … determine[ing] whether a session identity exists … [and] generating a session identity if no session identity exists,” as recited in claims 9, 21, and 33. For at least the above stated reasons, the Applicant respectfully submits that *Brendel* does not disclose claims 9, 21, and 33.

Claims 10-12 depend from claim 9. Claims 22-24 depend from claim 21. Claims 34-36 depend from claim 33. For at least the reason that dependent claims include the limitations of the claims from which they depend, the Applicant submits that claims 10-12, 22-24, and 34-36 are not anticipated by *Brendel*.

Claim Rejections § 103

Claims 3, 15, and, 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brendel*. Claim 3 depends, indirectly, from claim 1, claim 15 depends, indirectly, from claim 13, and claim 27 depends, indirectly, from claim 25. For at least the reasons set forth below, the Applicant submits that claims 3, 15, and, 27 are not rendered obvious by *Brendel*.

Brendel is cited as teaching that the “load-balancer reads the incoming packets, extracts the SSL session ID, and finds the SSL session entry in the SSL session table.” Whether or not *Brendel* discloses the limitations cited by the Office action, it does not teach or suggest “determine[ing] whether a session identity exists … transmit[ting] the data packet to a destination if **no session identity exists** … [and] receiv[ing] the session identity from the destination,” as recited in claims 1, 13, and 25. For at least the reason that *Brendel* does not teach or suggest the above-cited claim limitations, no modification of *Brendel* teaches or suggests the invention as recited in claims 3, 15, and 27. Thus, the Applicant respectfully submits that dependent claims 3, 15, and 27 are not rendered obvious by *Brendel*.

Conclusion

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: March 4, 2005

Philip A. Pedigo
Philip A. Pedigo
Reg. No. 52,107

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026
(503) 684-6200

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on:

3-04-2005

Date of Deposit

Katherine Jennings

Name of Person Mailing Correspondence

Katherine Jennings 3-04-2005